IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 158 of 1992

in

SPECIAL CIVIL APPLICATION No 95 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SIPU PROJECT EMPLOYEES WELFARE ASSOCIATION
Versus
STATE OF GUJARAT

Appearance:
MR YN OZA for Appellant
MR RC KODEKAR, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 16/03/2000

ORAL JUDGEMENT

(Per : Panchal, J.)

By means of filing this appeal under Clause 15 of the Letters Patent, the appellant has challenged interim order dated March 24, 1992 passed by the learned Single Judge in Special Civil Application No. 95/92, whereby interim relief to direct the respondents to immediately pay project allowance with arrears from May 1, 1988 to March 31, 1993 and thereafter also not to discontinue the amenities which were being made available to the members of the petitioner-Association, is refused.

2. The appellant is an association of the employees who are working at Sipu Project, District : Banaskantha. The case of the appellant is that the members of the association are entitled to benefits under circulars and government resolutions issued by the State of Gujarat.The grievance made in the petition is that Circular dated December 29, 1990 directing not to accord benefits of allowances and other amenities from May 1, 1988 to March 31, 1993 being illegal, should be set aside. It is also claimed in the petition that the Secretary, Narmada and Water Resources Department, Gandhinagar was not justified in directing the Superintending Engineer vide letter dated November 20, 1991 to effect recovery of amount of project allowance given to the members of the appellant-association. Under the circumstances, the appellant has filed Special Civil Application No. 95/92 and claimed reliefs as mentioned in Para-16 of the petition.

3. During the pendency of the petition, the appellant asked for interim relief to direct the respondents to immediately pay project allowance with arrears from May 1, 1988 to March 31, 1993 and thereafter not to discontinue the amenities which were being made available to the members of the petitioner-association. By way of interim relief, it was also prayed to restrain the respondents from recovering the project allowance which was already paid to the members of the petitioner-association. Initially, the learned Single Judge had granted ad-interim relief vide order dated January 8, 1992. However, the learned Single Judge has by the impugned order dated March 24, 1992 restrained the respondents from effecting recovery, but has refused to grant other reliefs by order dated March 24, 1992, which has given rise to the present appeal.

4. It may be stated that the interim relief as claimed was not granted by the learned Single Judge while passing the order which is impugned in the appeal, but ad-interim relief granted by order dated January 8, 1992 was continued till April 1, 1992 to enable the appellant to approach higher forum. The appellant has accordingly filed the present appeal challenging the said order. During the pendency of the appeal, Civil Application No. 756/92 was filed seeking interim relief which was claimed in the petition. The appeal and application were placed for hearing before Division Bench and the Division Bench hearing appeal, has admitted the same by an order dated April 1, 1992. On Civil Application No.756/92, the Division Bench has granted ad-interim relief and directed the respondents to provide to the members of the appellant-association amenities which were being provided earlier. Thereafter,rule was made absolute in Civil Application by an order dated April 21, 1992.

5. We have heard the learned Counsel for the appellant and considered the documents forming part of the petition. In our view, if interim relief as claimed by the appellant is granted, it would virtually amount to allowing the writ petition at the admission stage without adjudicating the claims raised in the petition on merits. The Supreme Court in ENGINEER-IN-CHIEF LT. GENERAL, ARMY HEADQUARTERS, NEW DELHI AND ANOTHER v. ASI REDDY AND OTHERS, 1987 (Supp) Supreme Court Cases 139 has ruled that interim relief which amounts to virtually allowing writ petition for interim purposes, should not be issued by the High Court in a petition under Article 226 of the Constitution. In the said case, Calcutta High Court had directed the respondents in the writ petition to maintain status quo or not to alter status-quo regarding payment of higher pay-scale to the original petitioners. The Supreme Court has held that the High Court was not justified in passing such an order because if on merits the writ petitioners were entitled to be paid as per the higher pay-scale, it was always open to the High Court to decide it on merits and pass an appropriate order at the time of final disposal of the writ petition. The view that High Court should not in a petition under Article 226 of the Constitution grant interim relief which virtually amounts to allowing writ petition at the admission stage has been reiterated by the Supreme Court in several reported decisions. We may mention that the appellant has claimed mandatory interim relief and this is quite evident if one refers to Para-16(c) of the petition. Such a relief is not warranted in the facts and circumstances of the case. In our view, it cannot be said that any error was committed by the learned Single

Judge in refusing mandatory interim relief necessitating our interference in the present appeal. The appeal, therefore, cannot be accepted and is liable to be dismissed. We, however, clarify that the learned Single Judge has stayed recovery and that part of the order is not challenged by the respondents at all. Therefore, recovery would stand stayed till the disposal of the petition, but subject to the result of the petition.

For the foregoing reasons, the appeal fails and is dismissed, with no order as to costs. It would be open to the appellant to request the learned Single Judge to take-up the petition for final hearing on priority basis.

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16.3.2000 (J.M.Panchal,J.) (A.M.Kapadia,J.)

(patel)